
From: Linda Joseph <ljoseph@sjalegal.com>
Sent: Wednesday, January 26, 2022 12:06 PM
To: Jeremiah McCarthy
Cc: DANIEL SELTZER; RENAY OLIVER; NORA CURTIN; Alicia Rood; Eric Glynn
Subject: EEOC v. Staffing Solutions of WNY, Inc., No. 1:18-cv-00562-LJV-JJM; Defendant's response to the EEOC's request for a hearing on EEOC's Letter (ECF No. 101)
Attachments: Letter to McCarthy Responding to EEOC Letter Motion re ESI discovery.pdf
Importance: High

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Dear Judge McCarthy:

We are writing in response to the EEOC's email of yesterday requesting a hearing regarding (a) whether an analysis/document prepared by a Staffing Solution's employee is protected by the attorney work privilege, and Defendant's compromise offer to produce the factual portions of the analysis while redacting one column from the analysis which contained notes to counsel and counsel's comments regarding the factual portion of the analysis; and (b) whether Plaintiff is entitled to payroll and compensation information for Staffing Solution's owners and employees, based solely on the fact that it has asserted a claim for punitive damages. We have attached the December 3, 2021, letter submission which addresses these issues at page 8-11. (Docket 103).

On the privilege issue, we note that there really is no dispute as to the hornbook law on privilege and waiver. However, the EEOC seems to ignore that we are providing the factual portions of the analysis/document and excluding only the privileged column 5 which contains both attorney work product and communications between client and attorney. As to any waiver of the attorney work product privilege and the attorney/client communication privilege, the EEOC claims such waiver based solely upon "opinions" expressed by Ms. Faulhaber and a former employee who worked on the analysis at the direction of counsel. Since we are not withholding the factual data and information which were the basis for these "opinions," there is no "waiver" of column 5 which is solely privileged information. Indeed, as to the EEOC's concern that they need the privileged information to cross examine Ms. Fahlhaber on these opinions, the EEOC has all the facts in columns one to four to use in such cross examination. Therefore, there is no basis at all for demanding disclosure of column 5 which contains only privileged information.

In short, we do not see a need for a hearing on these issues which are full addressed in the prior submissions. Nonetheless, should the Court prefer to hold a hearing, for the Court's information in scheduling a hearing, both myself and Alicia Rood will be unavailable on February 11th and from February 21st through March 8th.

If you require any additional information, please do not hesitate to let me know.

Linda Joseph

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